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OGC Has Reviewed

NARCOTICS

Use & Handling.

Chief, Medical Services

29 November 1948

Office of the General Counsel

Medical Supply Procedure

1. Reference is made to your memorandum of 14 October 1948, which raised certain questions in regard to the handling and control of narcotics and allied drugs. Since some of the specific questions require alternative assumptions, we believe a more comprehensible reply can be given through a general explanation than through isolated answers.

2. Generally, international narcotics control is effected through protocol which requires "member" nations to estimate their annual supply and demand and adhere to such limits. Thus, even licensed import or export is restricted to a quota. Within the countries themselves, the degree of control varies with local inclination. The United States has several regulatory federal statutes, not all of which require our attention (e.g. there is no need to consider Marijuana control). They each serve their own and are complementary in function. First, is the Harrison Narcotics Act which is designed to control trafficking, transportation and possession within the United States and its insular possessions. It requires registration and the payment of a tax, and it is ostensibly a tax measure although the penalties are enforced by the Bureau of Narcotics. Under this Act, Government officials are exempt when performing any of the business indicated in the Act within the course of their official duties, subject to proof of their entitlement to this exemption. The Narcotic Drug Import and Export Act regulates just what its title indicates. Certain conditional exemptions contained in the Harrison Act are not contained in the Import-Export Act, nor are Government officials exempt. It can be noted that drugs, not initially included, can be brought within the scope of both Acts by Presidential Proclamation. In general, the export of narcotics is unlawful unless the place of entry is a country party to the International Opium Convention of 1912, and then only if the country (1) controls imports, (2) the narcotic is assigned to an authorized licensee, (3) it is for medical and legitimate uses, (4) it will not be re-exported, and (5) a shortage and demand for the narcotic exists. Smoking opium is unconditionally prohibited in all events. Insofar as the mechanics of obtaining a license are concerned, application is filed with the Commissioner of Narcotics, supported by the necessary information and an import license or permit

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from the country of entry. Records should be retained by the exporter, identifying the foreign consignee. An additional statutory provision (which is not part of the Import-Export Act) controls the possession of narcotics on board a United States vessel on a foreign voyage.

3. Within the United States and its insular possessions, the Food and Drug Administration and the Bureau of Narcotics act in conjunction. The former regulates the admission of all drugs (whether or not narcotics) into interstate commerce and some control on their handling; the latter makes a determination on the narcotic properties of a drug. In this respect, the Food and Drug Administration distinguishes between "habit-forming" drugs producing only a psychic dependence and "addictive" drugs causing both psychic and physiological dependence. Barbiturates, for instance, are in the twilight zone of control and are not subject to federal narcotic regulation. Some states may exercise control over the dispensation of this type of drug but the Food and Drug Administration requires only that the package be appropriately marked "May be habit-forming."

4. In view of the general intent of the statutes controlling both the domestic as well as the international use of narcotics, it seems cogent that an authorized use by a Governmental official - clearly in the performance of his duty - can be justified even in the face of a technical violation of a United States statute. The relative compulsion of enforcing a federal prohibition should certainly be balanced against the desideratum of accomplishing an end which is equally in the interest of the Government. It is therefore suggested that adequate justification for the issuance of any narcotics be obtained and retained on record whenever the dispensation of narcotics is required. Adequate proof that the narcotic was issued by the Medical Officer in accordance with an operational order would appear to insulate the Medical Officer against prosecution. As a practical matter, it is understood that the only narcotic derivative which is dispensed at the present time is paregoric. This is issued in small personal quantities and is conditionally exempt under the Harrison Act. There is, therefore, no potential liability provided it is for medical or legitimate purposes. Barbiturates, as explained above, are not subject to federal control at the present time, and, finally it is understood that drugs used in support of operations have not been narcotic in nature.

5. This office will be glad to advise you regarding any specific situation that may occur, but, in the meantime, it is hoped that the above discussion provides at least a general background for action.